

FAIR EMPLOYMENT & HOUSING COMMISSION

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MINUTES 473rd COMMISSION MEETING

May 6, 2008
Hiram Johnson State Building
455 Golden Gate Avenue, Santa Barbara Room
San Francisco, California

PRESENT:

Chairman George Woolverton, Vice-Chair Tamiza Hockenhull, Commissioners Linda Ng, Carol Freeman and Carlos Bustamante; and Commission staff Ann Noel, Caroline Hunt, Joseph Ragazzo, Bruce Carter, Denise Choye and Loc D. Tra; Commission legal externs Erin Kuka and Katherine Joseph; Deputy Assistant Attorney General Nancy Beninati; Department of Fair Employment and Housing District Administrator Susan Sheftel; and member of the public Gary Blasi of UCLA.

Chairman Woolverton moved, Vice-Chair Hockenhull seconded, and the Commission voted 5:0 to call the meeting to order at 9:10 a.m. [08-13]

OPEN SESSION

REVIEW OF AGENDA

The Commission accepted the Agenda as submitted.

REVIEW OF THE MINUTES

Chairman Woolverton moved, Vice-Chair Hockenhull seconded, and the Commission voted 5:0 to adopt the Minutes and Transactions of the 472st meeting as submitted. [08-14]

CLOSED SESSION

Only the Commissioners, Commission staff, Commission interns and Attorney General staff were present.

The Commission discussed writs, hearings and litigation and deliberated on pending cases.

Writs and Appeals

ELAS Noel reported on the status of the following case.

(1) DFEH v. San Francisco BART (Bartley)

Respondent BART's attorney missed the April 7, 2008 deadline for filing its opening brief with the Court of Appeal. The Court of Appeal issued an order stating that if the respondent does not file a brief by May 7, 2008, the Court will dismiss BART's appeal. DAG Kathy Mikkelsen represents the Commission.

ALJ Hunt introduced the Commission's summer legal externs, Erin Kuka and Katherine Joseph.

ELAS Noel introduced the Commission's limited term staff, attorney Bruce Carter, who is assisting the Commission on its housing regulations.

ALJ Hunt presented the following two cases.

(2) DFEH v. Prunty's New Beginnings (Project Sentinel/Jensen)

On January 8, 2008, the Santa Clara County Superior Court granted the Project Sentinel's Petition for Attorney's Fees and remanded the matter to the Commission, ordering the Commission to reconsider its attorney's fees order, consistent with the Commission's attorney's fees standard in DFEH v. Raytheon. DAG Nancy Beninati represents the Commission.

Commissioner Bustamante moved, Commissioner Hockenhull seconded, and the Commission voted 4:1 to adopt a revised attorney's fees order consistent with the Superior Court's order. Chairman Woolverton dissented. [08-15]

(3) DFEH v. Sasco Electric (Scherl)

On January 25, 2008, the AG's Office filed an Answer to Sasco Electric's Petition. All parties involved had reached agreement on a briefing schedule and a proposed hearing date of March 20, 2008. However, the case was recently transferred to a different judge and thus, these dates may change. However, the matter was tentatively rescheduled for argument in late May 2008. DAG Antonette Cordero represents the Commission.

ALJ Ragazzo presented the following case.

(4) DFEH v. City of Fullerton (Montero)

Commissioner Ng moved, Chairman Woolverton seconded, and the Commission voted 5:0 to adopt the modified proposed decision reflecting a seven percent interest rate for damages

awarded. [08-16]

Post Decision

ELAS Noel reported on the status of the following case.

- (1) DFEH v. Sacramento Unified School District (Funaroff)

Complainant Funaroff filed a motion for reconsideration which the Commission denied.

ALJ Ragazzo presented the following case.

- (2) DFEH v. Gonzales (Banks/Project Sentinel)

Commissioner Bustamante moved, Chairman Woolverton seconded, and the Commission voted 4:0 to deny the respondent's motion for reconsideration. Commissioner Freeman recused herself from voting. [08-17]

ELAS Noel reported on the following case.

- (3) DFEH v. Buckley Trust (Moreno)

The respondents have paid their damages in full.

Administrative Adjudication: *Pending Decisions, Hearings Completed – 100 days for FEHC to act in [bold]*

At 9:36 a.m. ALJ Hunt left the room and ALJ Ragazzo presented the following case.

- (1) DFEH v. Team One Stop (Reed) [6/25/08]

Chairman Woolverton moved, Vice-Chair Hockenhull seconded, and the Commission voted 5:0 to adopt the proposed decision. [08-18]

At 9:50 a.m. ALJ Ragazzo left the room while ALJ Hunt rejoined and presented the following case.

- (2) DFEH v. Ottovich (Coleman) [8/4/08]

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission voted 5:0 to adopt the proposed decision. [08-19]

At 9:58 a.m. ALJ Ragazzo rejoined the meeting.

Chair Woolverton moved, Vice-Chair Hockenhull seconded, and the Commission

voted 5:0 to end Closed Session and to enter Open Session at 10:00 a.m. [08-20]

OPEN SESSION

REGULATIONS

ELAS Noel reported on the Commission's regulatory projects for 2008-09.

Pregnancy Regulations: ELAS Noel reviewed with the Commission the updated proposed pregnancy regulations.

Commissioner Freeman moved, Commissioner Bustamante seconded, and the Commission voted 5:0 to adopt the revised proposed pregnancy regulations as submitted by the Commission regulations subcommittee and Commission staff and to begin the rulemaking process. [08-21]

To receive public comments on its revisions, the Commission will hold two hearings in Northern and Southern California where at least one Commissioner will be able to participate per hearing.

Disability Regulations: Staff is working on the disability regulations and will begin the rulemaking process on these regulations after the pregnancy regulations. A draft will be submitted for the Commissioners' consideration at the next Commission meeting.

Housing Regulations: Staff is also working on the housing regulations and will begin the rulemaking process on these regulations after the disability regulations. Staff has assembled a working group consisting of housing specialists to work with the Commission on these regulations. The working group is meeting once a month to discuss housing issues and draft regulations. The working group held its first meeting on April 17, 2008.

ELAS Noel reported that she and DFEH Director Phyllis Cheng met with State Bar President Jeff Bleich to propose that the State Bar set up a committee focusing on housing issues similar to its labor and employment committee. Bleich was enthusiastic about the idea.

LEGISLATION

ALJ Ragazzo reported on legislative bills of interest to the Commission. These bills would impact the Fair Employment and Housing Act (FEHA). Ragazzo discussed the status of AB 2533 (Disability Access Remedies), SB 1766 (Disability Access), SB 1608 (Equal Access Rights to Disabled Persons Civil Actions), AB 2799 (FEHA Hate Crimes Commission) and AB 2874 (FEHA-Ralph Act Damage Awards), the last of which would remove the current cap of \$150,000 on FEHC actual damage awards for violation of the Ralph Act.

DFEH District Administrator Oakland Housing Unit Susan Sheftel joined the meeting

at 10:16 a.m.

COMMISSIONERS' REPORTS

The Commission congratulated Commissioner Linda Ng for receiving the Local Heroes Award from Union Bank and KVIE, a local Sacramento PBS station, in celebration of the Asian Pacific American Heritage month.

EXECUTIVE AND LEGAL AFFAIRS SECRETARY'S (ELAS) ACTIVITY REPORT

ELAS Noel discussed the following items from her Report.

Commissioner Appointments: Due to the fiscal crisis in California, there's a possibility that the Governor will not be appointing any new Commissioners.

2008-09 Budget: Due to statewide General Fund budget cuts, the Commission will absorb a 10% budget reduction, \$117,000, for the next fiscal year. With such a drastic budget cut, the Commission will not be able to fill former FEHC ALJ Regina Brown's position. This is in effect a 33 1/3% cut in the Commission's ALJ attorney staff.

There could be further cuts beyond this amount. If so, the Commission's ability to fulfill its core missions of adjudication and rulemaking will be greatly compromised. The Commission's two budget change proposals, one requesting \$10,000 for Commission staff training and the other requesting \$7,000 for IT support were not approved for the next fiscal year.

Adjudication and Settlement Conferences: Since January 2008, the DFEH has issued 15 accusations; half of what it was this time last year. The Commission's ALJs handled 26 proceedings from January 1 to April 25, 2008. These included 14 Motions, four status or pre-hearing conferences, three evidentiary hearings, one settlement conference and two mediations.

AB 1825, Ethics and Open Meeting Act training: ELAS Noel reminded the Commissioners that the state's online ethics training is required once every two years and the course is being offered on the Department of Justice's website at <http://ag.ca.gov/ethics>.

Staff has asked the Department of Consumer Affairs to speak on the Bagley-Keene Open Meeting Act at the Commission meeting. This training has been postponed until the next Commission meeting.

Outreach and Public Speaking: Staff has curtailed most of its public speaking to focus on regulatory work.

ELAS Noel and Director Phyllis Cheng attended the Southern California Employers' Roundtable's (SCERT) February 28, 2008 seminar, which focused on disability and workers' compensation. The Department founded Employer's Roundtable to work with the employers' community on issues of common concern. Director Cheng is trying to revitalize the Northern and

Central California chapters to the same active level as the Southern California chapter. Cheng is also working with SCERT on the planning for the 50th anniversary celebration of the FEHA.

In April 2008, ELAS Noel and ALJ Hunt spoke to a visiting delegation of law enforcement professionals, academics and community representatives from Voronezh, Russia. ALJ Hunt spoke about administrative remedies for victims of hate crimes and ELAS Noel spoke about police-community partnerships to fight bigotry and hate crimes.

Training: In March and April 2008, ALJs Hunt and Ragazzo participated in a National Judicial College web course on Advanced Evidence.

Staffing: To assist with the Commission's regulatory work, the Commission hired attorney Bruce Carter as a limited term employee until the end of the fiscal year. In addition, the Commission has hired legal externs Erin Kuka, Katherine Joseph, and Joshua Cruz for the summer.

Technology: The Commission now has web conferencing capabilities and staff recommended that the Commission should explore this option for future Commission meetings. In light of the State's current budget constraints, web conferencing for some Commission meetings might prove cost effective.

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING'S REPORT

Susan Sheftel, DFEH District Administrator of the Northern California Oakland Housing Unit, attended the meeting on behalf of Director Phyllis Cheng. In the future, Director Cheng would like to have a different DFEH District Administrator attend each Commission meeting in her stead. Sheftel reported on the Department's Housing Unit.

Sheftel reported that one of Director Cheng's big concerns is that not enough people practice fair housing law in California. Cheng is hoping to build a core of professionals in California to litigate fair housing law cases. She is asking the State Bar to form a housing law committee to encourage California's attorneys to work in fair housing law.

For 2008, as of April 22, 4,951 housing and employment complaints have been filed. 748 of these, or 15%, were housing cases. This is significant because there are only three housing units with 25 housing consultants to handle these cases. 145 of these cases went to the DFEH's legal department to issue accusations. 64 of these accusations, or 44%, were housing cases.

ELAS Noel asked Sheftel what contributes to the high percentage of housing complaints proceeding to accusations. Sheftel stated that many housing providers are "mom and pop" operations, who are not sophisticated and are not inclined to settle as quickly as employers in employment discrimination cases represented by counsel.

As of March 2008, the housing unit closed 111 cases, of which 105 were dual-filed with the United States Department of Housing and Urban Development (HUD) and the unit settled 29 cases. Also, the mediation unit has closed a number of cases.

DFEH converted the third limited term housing unit at the Elk Grove office to a

permanent housing unit. With additional funding from HUD, the Department has established a fourth limited term unit at this location. The DFEH is hiring more consultants for these units.

April is designated as Fair Housing Month. This past April, DFEH District Administrators selected a small notable group of fair housing counsels to receive proclamations from Governor Arnold Schwarzenegger to honor their work in housing.

HUD has provided DFEH with housing law educational materials and has asked the Department to work with schools to educate children about fair housing law.

ATTORNEY GENERAL'S REPORT

Deputy Attorney General (DAG) Nancy Beninati reported on the work of the Civil Rights Enforcement Section (CRES) of the Attorney General's office.

CRES DAG Tim Muscat has accepted the Chief Counsel position with the Department. Previously, Muscat had prepared an amicus brief on behalf of the Attorney General in *Californians for Disability Rights v. Mervyn's*. In this case, the AG's office filed an amicus brief on behalf of plaintiff which had asserted that Mervyn's did not provide wheelchair-accessible aisles. This case has been remanded from the Supreme Court to the Court of Appeals in San Francisco and will be argued on May 19. This date might change due to a continuance request.

The AG's Office has filed an amicus brief in *North Coast Women's Medical Group v. Superior Court*, a case challenging an Unruh Act claim against a fertility clinic where several of their doctors would not inseminate same-sex partnered women. The medical association made a defense claim that it was against several physicians' religion to provide fertility services to unmarried persons. The issue before the court is whether there is a religious objection defense to the Unruh Act. The oral argument is set for May 28 in Southern California.

The AG's Office has been working on disability assess housing cases. Some of these cases have been settled by DAGs Michael Newman and Tim Muscat. The AG's office is hoping to settle more of these cases in the next few months.

A familial status housing discrimination case, *DFEH v. Esquivel*, is currently on appeal in the Sixth District Court of Appeal. The landlord has filed a Strategic Lawsuit Against Public Participation (SLAPP) suit.

The oral argument in *U.S. Chamber of Commerce v. Brown* was heard in the United States Supreme Court in March and a decision will be made by June.

PUBLIC COMMENTS

Gary Blasi of UCLA Law School stated that Department Director Cheng has asked UCLA and other institutions to help research and participate in the celebration of the 50th anniversary of the Fair Employment and Housing Act (FEHA) and he attended the meeting to observe the Commission's meeting process.

There were no other public comments.

Chairman Woolverton moved, Vice-Chair Hockenhull seconded, and the Commission voted 5:0 to end Open Session and adjourned the meeting at 10:55 a.m. [08-22]

ADJOURNMENT

The Commission adjourned its meeting at 10:55 a.m.

Date: May 6, 2008

GEORGE WOOLVERTON
Chairman

ANN M. NOEL
Executive and Legal Affairs Secretary

**REPORT OF TRANSACTIONS
OF THE 473rd COMMISSION MEETING
May 6, 2008
San Francisco, California**

THE COMMISSION AT THIS MEETING TOOK THE FOLLOWING ACTIONS:

- 08-13 Voted 5:0 to call the meeting to order.
- 08-14 Voted 5:0 to approve the Minutes and Transactions of the 472nd meeting.
- 08-15 Voted 4:1 to adopt a revised attorney's fee order consistent with the Superior Court's order in DFEH v. Prunty's New Beginnings (Project Sentinel/Jensen). Chairman Woolverton dissented.
- 08-16 Voted 5:0 to adopt the modified proposed decision reflecting a seven percent interest rate for damages awarded in DFEH v. City of Fullerton (Montero).
- 08-17 Voted 4:0 to deny the respondent's motion for reconsideration in DFEH v. Gonzales (Banks/Project Sentinel). Commissioner Freeman recused herself.
- 08-18 Voted 5:0 to adopt the proposed decision in DFEH v. Team One Stop (Reed).
- 08-19 Voted 5:0 to adopt the proposed decision in DFEH v. Ottovich (Coleman).
- 08-20 Voted 5:0 to end Closed Session and to enter Open Session.
- 08-21 Voted 5:0 to adopt the revised proposed pregnancy regulations as submitted by the Commission regulations subcommittee and Commission staff and begin the rulemaking process.
- 08-22 Voted 5:0 to end Open Session and adjourned the meeting.

Prepared By

Loc D. Tra
Clerk of the Commission